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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,376	01/23/2004	Andrew Halliday	1410/67640	7589

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EXAMINER	
WEIER, ANTHONY J	
ART UNIT	**PAPER NUMBER**
1794	

MAIL DATE	DELIVERY MODE
01/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/763,376	HALLIDAY ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 November 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 2, 3, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Fanzutti et al.

Fanzutti et al discloses a process wherein a first and second beverage cartridge (tea, coffee, creamer, etc.) is inserted into a beverage preparation machine wherein an aqueous medium is passed through the first and second cartridges to facilitate the preparation of an extract or reconstituted beverage portion wherein same are both added to the same receptacle (e.g. paragraph 102; 69). It is considered expected that the addition of the creamer after dispensing the coffee would provide some degree of foaming to the coffee.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 4-6, 8-12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fanzutti et al.

The claims further call for the removal of one of the cartridges before inserting of a second one. However, Fanzutti et al discloses several start, stop scenarios wherein cartridges are removed and placed into the machine (paragraphs 103-106). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided cartridges in any manner of order as a matter of preference.

Although Fanzutti et al discloses ground coffee in one cartridge, there is no recitation that same is roasted (as called for in claim 5). Moreover, the claims further call for the use of concentrated dairy-based product with the degree of concentration and fat content of same. However, roasted ground coffee and concentrated dairy-based products are notoriously well known ingredients in the preparation of beverages, and it would have been further obvious to have incorporated same as a matter of preference depending on, for example, the particular flavor desired in the final beverage product. As for concentration and fat content, such determinations would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at the concentration as claimed through routine experimental optimization depending on the particular amount of water intended in the final product, the cost of pod packaging (more concentrated ingredient would require less packaging), etc.

Moreover, it would have been obvious to have arrived at a particular fat content as a matter of preference depending on desired dietary requirements.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fanzutti et al taken together with Cirkel-Egner et al.

It should be noted that Fanzutti et al further discloses liquid coffee contained within one of the cartridges prior to the step of operating the beverage machine. Fanzutti et al further discloses said pods being supplied with "any suitable material, intended to be mixed or brewed with hot water" (paragraph 69). Clearly, liquid coffee concentrate is one notoriously well known material mixed with water to produce a beverage product. For example, Cirkel-Egner et al teach including coffee concentrate containers such as capsules to be used as dispenser containers in food serve applications (paragraphs 16, 41, 42, and 46). It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated a coffee liquid in the invention of Fanzutti et al as a well known alternative and because same offers the advantage of being perceived to have a better quality than soluble beverage powders (paragraph 5).

Response to Arguments

6. Applicant's arguments filed 11/1/07 have been fully considered but they are not persuasive.

Applicant argues that Fanzutti does not disclose a cartridge that contains a liquid dairy-based ingredient. Fanzutti does disclose the presence of a creamer in cartridges wherein same are typically liquid. However, in the instance that the creamer begins as

a powder inside the cartridge, it should be noted that once the hot water enters said cartridge, any powder becomes hydrated into a liquid. Fanzutti et al makes several references to creamer (e.g. paragraph 102) and nondairy creamer (paragraphs 69 and 78). Absent a language suggesting otherwise, it is considered inherent that the creamer described, for example, in paragraph 102 is a dairy product. Nevertheless, Fanzutti further discloses the use of a few typical additives as well as "any other suitable coffee related condiment". Clearly, creamer or milk are notoriously well known coffee related condiments and would fall within such description.

Applicant argues that Fanzutti does not provide for dispensing from a second pod after dispensing and removing a first pod. However, Fanzutti et al discloses several start, stop scenarios wherein cartridges are removed and placed into the machine (paragraphs 103-106). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided cartridges in any manner of order as a matter of preference. Applicant has provided no evidence that inserting a pod, removing same, and inserting another same within the context of the instantly claimed invention would provide a patentable distinction.

All other arguments have been addressed in view of the rejections as set forth above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
January 16, 2008